



REPUBLIC OF KENYA



KENYA LAW
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Beya v Mwilitsa (Civil Appeal 54 of 2023) [2025] KEHC 7124 (KLR) (29 May 2025) (Judgment)

Neutral citation: [2025] KEHC 7124 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA**

CIVIL APPEAL 54 OF 2023

PJO OTIENO, J

MAY 29, 2025

BETWEEN

SAMMY BEYA APPELLANT

AND

ERICK MWILITSA RESPONDENT

*(Being an appeal from the judgment of Hon. Sylvia A.
Wayodi RM in Kakamega SCCC Claim No. E026 OF 2023)*

JUDGMENT

Background of the Appeal.

1. By his statement of claim filed on 14/4/2023, the respondent sought judgment in the sum of Kshs. 450,000/- at the Small Claims Court, being the amount paid by him to the appellant for the purchase of Motor Vehicle Registration No. KBK 446L. he also prayed for the costs of the suit as well as interests on the sum claimed, from the date of the suit, and on costs.
2. Together with the statement of claim, the respondent filed a list of documents which included copies of the log book, sale agreement and warrants of attachment and sale. He also filed two witness statements.
3. When served with the claim form, the appellant admitted having sold to the respondent the motor vehicle but denied knowledge of the motor vehicle being involved in an accident which resulted in its repossession (sic) by auctioneers.
4. The matter was heard by way of oral evidence. At trial the respondent gave evidence and called one other witness while the appellant was the only witness to testify
5. In a reserved judgment delivered on 31/3/2023, the trial court found for the respondent against the appellant by an order that he pays to the respondent the sum of Kshs. 450,000 with interest at court rate from the date of filing the claim till payment in full. The court further awarded to the respondent the costs of the suit.



6. The appellant felt aggrieved with the decision of the trial court and lodged the instant appeal by the memorandum of appeal dated 14th April, 2023. The Memorandum of Appeal seeks to have the appeal allowed and judgment of the trial court set aside and, in its place substituted an order dismissing the suit. It is also prayed that the appellant be awarded the costs of both the appeal and those at trial.
7. The appeal is premised on the grounds that;
 - a. THAT the learned trial magistrate/adjudicator misdirected herself in failing to make a finding against the respondent/claimant.
 - b. THAT the learned trial magistrate/adjudicator erred in law in not finding that the claimant and the claimant's action is guilty of laches.
 - c. THAT the learned trial magistrate/adjudicator erred in law in finding that the appellant breached the term of the contract by not transferring a motor vehicle to the respondent.
 - d. THAT the learned trial magistrate/adjudicator erred in law by holding that the appellant did not have a right over the motor vehicle to transfer to the respondent.
 - e. THAT the learned trial magistrate/adjudicator erred in law in holding that the motor vehicle was encumbered during the time of sale by the appellant to the respondent.
 - f. THAT the learned trial magistrate/adjudicator erred in law in holding that the appellant failed to ensure quiet possession of the motor vehicle by the respondent and in so doing breached the terms of the contract.
 - g. THAT the learned trial magistrate/adjudicator misdirected herself in totally disregarding the evidence by way of cross examination and reexamination by the appellant's counsel.
 - h. THAT the learned trial magistrate/adjudicator erred in law in awarding costs to the claimant which was not fair in all circumstances considered.
8. The appeal has been canvassed by way of written submissions which submissions have been perused by the court and valuable benefit extracted. The court shall give the due regard to the submissions filed without reproducing the same here.

Issue For Determination

9. The court has anxiously considered the grounds of appeal, the proceedings of the lower court and the submissions by both parties. While the appellant has identified five substantive issues for determination by the court, the respondent identifies only two issues.
10. The court in its own appreciation of the dispute in the appeal considers the all-encompassing issue for its determination to be whether the respondent proved to the requisite standards that the appellant was liable to him in the sum of Kshs 450,000/- being the purchase price for Motor Vehicle Registration Number KBK 446L. An answer to that question will inevitably entail determining if the appellant did pass the legal title to the motor vehicle to the respondent.
11. The governing law on the sale of specific or ascertained goods, is coded under sections 14 and 19 of the *sale of Goods Act*. Where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.
12. It is thus the general rule of sale of goods that the title to goods in a deliverable state pass upon delivery or when the parties agree. In the matter at hand, the agreement between the parties is not explicit on when the title would pass. In fact, the agreement done in hand does not even allude to when the



documents of title would pass. It is therefore clear that from the agreement, it is not possible to discern what the parties intended to be the term on passage of legal title.

13. That intention emerged at the trial when the appellant, on being cross examined said: -
” I trade in motor vehicles. I know motor vehicle business. Ownership is in the log book. It has the name of the owner. The motor vehicle I sold did not have my name. I did not inform the owner. I did not write in the agreement. It has a different owner. He paid the whole amount. I did not transfer the owner.”
14. That record of the trial court implies that transfer of the motor vehicle to the buyer was on the card as an indispensable obligation upon the appellant. One may thus safely conclude that the parties intended that the property in the chattel would only pass upon transfer even though possession had been delivered earlier. The sale was thus not unconditional but subject to the transfer being effected.
15. The appellant in this appeal now changes stand and asserts that he had passed title upon payment in full and relies on the decision of the Court of Appeal in *Osumo Apima Nyaundi vs Charles Isaboke Onyancha Kibondori* (1996) eKLR where the Court of Appeal held that the ownership of a vehicle passes by sale and delivery.
16. That decision no doubt has stood the test of time on when the property of a motor vehicle passes being a specific and an ascertained chattel in a deliverable state. However, it is to be noted that the decision was arrived at following the application of section 20 of the *sale of goods Act* on how to the intention of the parties in a contract for sale of goods. The decision of the court of appeal was on an unconditional sale and is not of help to the appellant who entered a sale conditional upon transfer.
17. The general rule that property in specific goods sold unconditionally passes upon sale, like all others general rules, must have an exception or two. A motor vehicle is indeed a chattel in a deliverable state whose beneficial or equitable title may just pass by delivery of possession. However, the law requires that ownership of motor vehicles be registered to vest the legal title as opposed to possessory, beneficial or just equitable ownership. The rationale for need for registration cannot be gainsaid. The first, in my opinion, is the public interest in keeping records of a valuable asset capable of offer and registration as security for financing, the collection of revenue and the facilitation of the objects of compulsory third party insurance intended to protect the rights of members of the public who may suffer damage from the use of motor vehicles.
18. To this court the provisions of the *Traffic Act* imposing a duty to register a transfer of a motor vehicle within set time limes and setting a penalty must not be left to be merely aspirational but must be given the force of law. It is important that parties to a contract for the sale of a motor vehicle make the registration of transfer a condition of the sale. Where the parties fail to do so, the application and interpretation of section 9 as read with section 14 of the *Traffic Act*, be given the effect to mean that the legal title passes not before registration.
19. Moreover, Section 14 of the *Sale of Goods Act* stipulates the implied conditions and warranties in the sale of goods. The court in *Stephen Kilonzo Nyondo v Samuel Wahome Kibuthu* [2015] eKLR interpreted the provision to mean: -

“In a contract of sale, there is an implied term on the part of the seller that in the case of a sale he has a right to sell the goods, and in the case of an agreement to sell he will have such a right at the time when the property is to pass. In a contract of sale, there is also an implied term that- (a) the goods are free, and will remain free until the time when the property is to pass, from any charge or encumbrance not disclosed or known to the buyer before the



contract is made, and (b) the buyer will enjoy quiet possession of the goods except so far as it may be disturbed by the owner or other person entitled to the benefit of any charge or encumbrance so disclosed or known.”

20. The suit motor vehicle was attached by auctioneers pursuant to a decree issued in Oyugis PMCC 203 OF 2016. That decree is against one Samuel Odhiambo Okelo. No attempt was made at trial to associate the said decree holder with ownership of the motor vehicle but the respondent argued that the appellant was in breach of the implied warranty that he would enjoy quiet possession of the motor vehicle. The appellant on the other hand faulted the respondent for having not resisted the attachment by objection proceedings.

21. The scenario in this appeal reflects those the Court of Appeal faced in in *Heribert Maier V Eva-Marie Kersten* [2004] eKLR and the held as follows on the issue of liability;

“The essence of the contract of sale is the transfer of the property in the goods sold; consequently, where the seller has no right to sell the goods, a fundamental condition has been broken and the buyer can recover the price from the seller because the consideration for its payment has totally failed. See section 14 of the *Sale of Goods Act*.

Section 12(1) of the English *Sale of Goods Act* 1893, corresponds with Section 14(a) of our *Sale of Goods Act*. Clearly, the appellant’s ownership over the motor vehicle was not beyond reproach and the appellant did not attempt to perfect it when the police seized it. In the circumstances, the appellant had no right title to the motor vehicle and could pass none to the buyer, the respondent herein, at the time of the contract.”

22. The other claim by the appellants was that the respondent’s suit was time barred under the doctrine of laches. The court finds that contention and objection to be most unfounded and misconceived. The cause was founded on contract with a lifeline of six years. Laches or delay is only a defence when aligned with the limitation period. Here it was never so aligned. That objection ought not to have been raised at all for it is not founded.

23. That said, the court find the appeal to lack merit and the same is hereby dismissed with costs.

DATED AND SIGNED THIS 29TH DAY OF MAY, 2025.

PATRICK J O OTIENO

JUDGE

DATED, SIGNED AND DELIVERED AT KAKAMEGA, THIS 29TH DAY OF MAY, 2025.

S. MBUGI

JUDGE

In the presence of:

Mr. Nyaberi for the Respondent

C/A: Agong’a

